

Message Text

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INFO AMEMBASSY MOSCOW

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LIMDIS

FOR DEPUTY SECRETARY INGERSOLL AND UNDER SECRETARY MAW

FROM AMB JOHN NORTON MOORE. DEPT PLS PASS DOD/ISA, OJCS
AND L--ATT OXMAN AND D/LOS ATT ERKIN

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: POSSIBLE SOLUTION OF ARTIC-VULNERABLE AREA PROBLEM
WITH SOVIETS AND CANADIANS

1. SUMMARY. DURING BILATERAL LOS CONSULTATIONS WITH THE
SOVIETS, AMB KOLOSOSVSKI AND DEPUTY MINISTER TIKHONOV
SUGGESTED ON A PERSONAL BASIS POSSIBILITY OF SOLUTION TO
USSR-CANADA-US ARTIC-VULNERABLE AREA PROBLEM BY SOVIET
WILLINGNESS TO ACCEPT LANGUAGE LIMITING SUCH AREAS TO
QUOTE ICE COVERED AREAS UNQUOTE. SINCE PAST SOVIET
UNWILLINGNESS TO ACCEPT SUCH LANGUAGE HAS BEEN A MAJOR
OBSTACLE TO US-CANADIAN-SOVIET UNDERSTANDING ON THIS
IMPORTANT PROBLEM I PROVIDED, WITH CONCURRENCE MEMBERS
GENEVA LOS TEAM, TO SOVIETS ON PERSONAL BASIS POSSIBLE

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LANGUAGE WHICH WOULD BE USED TO RESOLVE PROBLEM ON

PACKAGE BASIS. IF SOVIETS RESPOND AFFIRMATIVELY, I WOULD RECOMMEND THAT WE MAKE A FORMAL PROPOSAL TO THE CANADIANS AT THE EARLIEST OPPORTUNITY AS THIS SEEMS LIKELY TO PROVIDE BREAKTHROUGH TO RESOLVE LONG-STANDING POLITICAL ISSUE WITH THE CANADIANS.

2. FYI-BACKGROUND. ONE OF THE MOST DIFFICULT LOS ISSUES HAS BEEN RIGHTS SOUGHT BY SOME COASTAL STATES, LED BY CANADA TO SET STANDARDS FOR VESSEL-SOURCE POLLUTION WITHIN 200 MILE ECONOMIC ZONE. CANADIAN CONCERN IS UNDERSCORED BY NEED TO VINDICATE 1970 CANADIAN ARTIC POLLUTION CONTROL ACT WHICH EXTENDS CANADIAN CONTROL OVER VESSEL-SOURCE POLLUTION 100 MILES IN ARTIC WATER ADJACENT TO CANADA. US HAS SOUGHT TO CONTROL ISSUE AND REACH AGREEMENT WITH CANADIANS BY AGREEING TO GREATER COASTAL STATE AUTHORITY IN ICE COVERED AREAS OF THE ARTIC IN EXCHANGE FOR CANADIAN AGREEMENT TO SUPPORT US STRAITS POSITION AND TO BACK OFF PUSHING STANDARDS THROUGHOUT THE 200 MILE ECONOMIC ZONE. THIS EFFORT AT A QUOTE VULNERABLE AREA SOLUTION UNQUOTE HAS BEEN PROMISED NOT ONLY ON APPROPRIATE CANADIAN QUID AS ABOVE, BUT ALSO ON SUFFICIENTLY NARROW DEFINITION OF VULNERABLE AREAS TO NARROWLY CONFINE GREATER COASTAL STATE AUTHORITY TO ICE COVERED AREAS OF THE ARTIC AND REASONABLE INTERNATIONAL REVIEW OF COASTAL STATE STANDARDS. EFFORT TO ACHIEVE BOTH LIMITING ASPECTS HAS ALWAYS FOUNDERED ON SOVIET UNWILLINGNESS TO REFER TO ICE OR ICE COVERED WATERS IN DEFINITION OF VULNERABLE AREA, OR TO ACCEPT ANY INTERNATIONAL REVIEW BECAUSE OF EXTREME SENSITIVITY OF ARTIC ISSUE. ISSUE OF DEGREE OF INTERNATIONAL REVIEW REQUIRED (I.E., FULL IMCO REVIEW OR APPLICATION OF LOS COMPULSORY DISPUTE SETTLEMENT PROCEDURES) IS HEAVILY TIED TO NARROWNESS OF DEFINITION AND PROCEDURE FOR REVIEW OF COASTAL STATE STANDARDS COULD BE MORE RELAXED IF VULNERABLE AREAS WERE CLEARLY CONFINED TO ICE COVERED AREAS OF THE ARTIC.

3. DURING GENEVA LOS BILATERALS ON SINGLE TEXT ON
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MARINE POLLUTION, US AND USSR DELS HAD LENGTHY DISCUSSIONS OF ARTICLE 20(5) ON VULNERABLE AREAS. SOVIETS DEFENDED INCLUSION OF THIS PARAGRAPH AND TOOK INITIAL HARD LINE AGAINST AMB MOORE'S SUGGESTION THAT PARAGRAPH BE EITHER DELETED OR CHANGED TO DEFINE AREAS AS ICE COVERED WATERS WITH APPROPRIATE INTERNATIONAL REVIEW. SUBSEQUENTLY AMB KOLOSSOVSKI AND DEPUTY MINISTER TIKHONOV

REQUESTED MEETING WITH MOORE AND PROPOSED COMPROMISES
ON PERSONAL BASIS OF SOVIET AGREEMENT TO INCLUSION
OF LANGUAGE LIMITING DEFINITION TO ICE COVERED
WATERS IF US WOULD DROP REQUIREMENT OF INTERNATIONAL
REVIEW. EMPHASIZING HIS INSTRUCTIONS WERE TO REQUIRE
FULL IMCO REVIEW, MOORE SUGGESTED ON PERSONAL BASIS
WITH CONCURRENT OF AMB CLINGAN AND DOD REP STUART
FRENCH THAT IT MIGHT BE POSSIBLE TO REACH AGREEMENT
IF SOVIETS WOULD AGREE IN ADDITION TO ICE COVERED
WATERS IN DEFINITION TO NORMATIVE STANDARD THAT
COASTAL STATE REGULATIONS MUST BE REASONABLE, SUBJECT
TO FULL REVIEW BY MORMAL COMPULSORY DISPUTE SETTLEMENT
PROVISIONS OF LOS TREATY, AND SUBJECT TO APPLICABILITY
OF SOVIERIGN IMMUNITY PROVISION (ART 42) TO COASTAL
STATE REGULATION IN VULNERABLE AREAS. AMB
KOLOSOSVSKI EXPRESSED REAL INTEREST AND REQUESTED
POSSIBLE AMENDMENT OF ART 20(5) ON PERSONAL BASIS TO
SEND TO MOSCOW FOR REVIEW. FOLLOWING PREPARATION BY
FULL GENEVA LOS TEAM AMB MOORE, AMB CLINGAN,
STUART FRENCH (DOD), ADM MORRIS (OJCS), TERRY
LEITZELL (STATE), MORRIS BUSBY (STATE) AND DAVE COOK
(CEQ), THE FOLLOWING LANGUAGE AMEDNNG ARTICLE 20(5) OF SINGLE
TEXT WAS GIVEN NEXT DAY TO AMB KOLOSOSVSKI ON PURELY PERSONAL
BASIS EMPHASIZING THIS MIGHT WELL NOT BE ACCEPTABLE TO US BUT
THAT IF IT WERE APPROVED BY MOSCOW WE WOULD PUT IT TO US
DECISION PROCESS FOR REVIEW: "THE COASTAL STATE
MAY ESTABLISH REASONABLE NON-DISCRIMINATORY LAWS AND
REGULATIONS FOR THE PREVENTION, REDUCTION AND CON-
TROL OF MARINE POLLUTION FROM VESSELS IN INCE COVERED
AREAS WITHIN THE ECONOMIC ZONE, WHERE PARTICULARLY
SEVERE CLIMATIC CONDITIONS CREATE OBSTRUCTIONS
TO NAVIGATION, AND POLLUTION OF THE MARINE
ENVIRONMENT, ACCORDING TO ACCEPTED SCIENTIFIC
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CRITERIA, COULD CAUSE MAJOR HARM TO OR IRREVERSIBLE
DISTUBANCE OF THE ECOLOGICAL BALANCE". THIS
PARAGRAPH WOULD BE ACCOMPANIED BY AN
UNDERSTANDING THAT IT WOULD BE SUBJECT TO COMPULSORY
DISPUTE SETTLEMENT AS PROVIDED GENERALLY IN GHE
TREATY AND THAT THE SOVIERIGN IMMUNITY ARTICLE
(42) WOULD APPLY TO THIS ARTICLE.

4. DURING DISCUSSIONS OF TEXT, AMB MOORE
EMPHASIZED THIS WOULD MEAN A REAL OBLIGATION ON
PART OF SOVIETS TO SUPPORT CDS APPLICABLE
TO ISSUE IN GENERAL CHAPTER OF LOS TREATY ALTHOUGH
IN VIEW OF USSR RELUCTANCE TO MENTION ARTIC CLEAR
DISPUTE SETTLEMENT REFERENCE COULD BE PART OF MORE
GENERAL LOS REFERENCE. MOORE ALSO EMPHASIZED THAT

REGULATIONS MUST BE SUBJECT TO SOVIERIGN IMMUNITY
(MILITARY EXEMPTION) CLAUSE OF TREATY.

5. AMBASSADOR KOLOSISOVSKI SEEMED TO LIKE TEXT
ALTHOUGH HE CONTINUED TO OBJECT TO USE OF "UN-
REASONABLE" IN NORMATIVE OBLIGATION
BINDING ON COASTAL STATE AND SOUGHT INSTEAD
"APPROPRIATE" AS STANDARD. HE INDICATED HE WOULD
REFER THE PERSONAL PROPOSAL TO MOSCOW FOR DECISION.

6. IF AFTER REVIEW SOVIETS ACCEPT TEXT, GENEVA LOS
TEAM RECOMMENDS THAT US LOS TEAM APPROACH
CANADAINS WITH LANGUAGE AT EARLIEST OPPORTUNITY,
EITHER IN GENEVA OR IN OTTAWA AFTER EVENSEN GROUP
MEETINGS. LANGUAGE SHOULD BE WELCOMED BY
CANADIANS AND SEEMS HIGHLY LIKELY TO LARGELY
RESOLVE LONG-STANDING PROBLEM.

7. ADVANTAGES IF SOVIETS AND CANADIANS ACCEPT
TEXT WOULD SEEM TO INCLUDE THE FOLLOWING:
(1) EASE CANADIAN PRESSURE ON THE ECNOMIC
ZONE IN GENERAL;
(2) PERMIT JOINT US-USSR POSITION THAT CANADIANS
MUST SUPPORT STRAITS POSITION IF VULNERABLE
AREA LANGUAGE IS TO BE INCLUDED IN TREATY;
(3) OBTAIN CANADIAN AGREEMENT NOT TO PUSH FOR
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STANDARD SETTING OVER VESSEL SOURCE POLLUTION
IN THE ECNOMIC ZONE;
(4) EASE CONFERENCE PRESSURE FOR EXPANSIVE
SPECIAL OR VULNERABLE AREA CONCEPT;
(5) RESOLVE ONE OF THE MOST DIFFICULT POLITICAL
ISSUES WITH THE CANADIANS;
(6) CONFINE VULNERABLE AREA CONCEPT TO CLEARLY
DEFINED AND NARROWLY LIMITED ICE CONVERED WATERS
OF THE ARTIC;
(7) BY APPLYING MILITARY EXEMPTION, OBTAIN
TACIT SOVIET ACCEPTANCE OF FREEDOM OF NAVIGATION OF
MILITARY VESSELS IN ARTIC WATERS OR AT LEAST
BINDING LEGAL OBLIGATION IN LOS TREATY TO THAT
EFFECT;
(8) POSSIBLY OBTAIN GREATER SOVIET
ACCEPTANCE OF CDS CHAPTER OF LOS TREATY.

8. THE PRIMARY DISADVANTAGE, OF COURSE, IS THAT
WE WOULD NOT HAVE IMCO REVIEW OF COASTAL STATE
STANDARDS. AS PRACTICAL MATTER, HOWDVER,
NORMATIVE STANDARD OF "REASONABLE" AND "NON-
DISCRIMINATORY" COUPLED WITH THREAT OF RESORT

TO CDS WOULD ENCOURAGE AT LEAST CANADIAN
CONSULTATION WITH US BEFORE PROMULGATING ANY
SUCH STANDARDS.

9. IF MOSCOW ACCEPTS, WE WILL NEED TO CAREFULLY
CONSIDER PROPOSAL IN US POLICY PROCESS AND TO
REVIEW BEST WAY TO PRESENT THE PROPOSAL TO
THE CANADIANS AND TO OUR MARITIME ALLIES,
PARTICULARLY THE UK AS CHAIRMAN OF THE GROUP OF
17 MARITIME COUNTRIES.

10. GENEVA LOS TEAM INCLUDING OD AND OJCS REPS
CONCUR IN COURSE OF ACTION RECOMMENDED THIS CABLE. DALE

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